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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,013	03/31/2004	Odile Aubrun-Sonneville	238320US0	5266
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
07/25/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/813,013

Applicant(s)

AUBRUN-SONNEVILLE ET AL.

Examiner

JYOTHSNA A. VENKAT

Art Unit

1615

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of amendment, remarks and terminal disclaimer filed on 4/17/08. Claim 20 has been added as per applicants' amendment dated 4/17/08. Claims 1-10 and 13-20 are pending in the application and claims 11-12 are withdrawn from consideration as being drawn to non-elected subject matter. In view of the terminal disclaimer, the obviousness-type double patenting rejection over U. S. Patent 6,905,674 is hereby withdrawn. In view of the common ownership statement, the rejection of claims 1-10 and 13-19 over commonly owned U. S. Patent 6,905,674 is hereby withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 and 13-20 are rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,645,476 ('476).

Patent '476, discloses a water-soluble co- polymer for use in cosmetic compositions, wherein the co-polymer contains a macro- monomer having a hydrophobic moiety and one or more olefinically unsaturated co- monomers which contain a sulfur atom (see abstract and col. 2, lines 18-28). Patent discloses that the co-polymers have a number molecular weight of 1,000-1, 5000,000 g/mol (see col. 4, lines 1-15). See col. 3 paragraphs 1-5, compositions comprising a

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copolymer wherein one monomer is acrylamidopropylmethylenesulfonic acid (AMPS) or its salts and one or more macro monomers including esters of methacrylic acid with alkyl ethoxylates which include 5 to 80 ethylene oxide (EO) units and/or (C10-C22)-alkyl radicals. In col. 2 lines 50-65 patent discloses a series of olefinically unsaturated monomers. Patent discloses at col. 11, Example 2, a general polymerization procedure wherein NH₃-neutralized AMPS, Genapol U-080 containing 10-1.8 carbon fatty alcohol polyglycol ethers with 8 EO units, a macro monomer, t-butanol and AIBN are reacted. Further patent discloses at col. 3 paragraphs 1 and 2 that the degree of neutralization is preferably between 70-100% meeting the partially neutralized form or a totally neutralized. At col. 4 paragraph 2, patent teaches that the polymers have a number-average MW of from 1000-20,000,000 g/mol, preferably 20,000 to 5,000,000, particularly preferably 100,000 to 1,500,000 g/mol. In col. 4, paragraph 7, patent discloses that the viscosities of the 1% strength aqueous solutions are preferably from 20,000 mPas to 100,000 mPas, in particular 60,000 mPas to 70,000 mPas. Patent discloses in col. 4 paragraphs 8 and 9 that the polymers are prepared by free-radical copolymerization with preference given to precipitation polymerization with tert-butanol. Patent discloses in col. 2 under example B olefinically unsaturated comonomers and at Col. 4 paragraph 3 teaches that in a preferred embodiment the polymers are cross linked, i.e. they contain at least one cross linker having at least two double bonds, which is copolymerized into the polymer. In col. 2 patent discloses preferred embodiments A and B and details macro monomers. Patent discloses at col. 4 paragraph 2 that the polymers can be random and in col. 3 paragraph 1 and 2 that the olefinically unsaturated acids of the polymers can be neutralized by monoalkylammonium, dialkylammomium, trialkylammomium, or tetraalkylammonium where the alkyl substituents of

the ammonium ions are (C1-C22)-alkyl radicals. The monomer as presented in formula (I) of the application is disclosed by patent at col. 2, lines 25-50.

Patent at col. 3, ll 35-60 discloses suitable macro monomers and at lines 60-64 discloses using iso-(C16-C18) fatty alcohol polyglycol ethers with 25 EO units. The molar proportion of monomer units are anticipated by patent at col. 3 line 65 and col. 4 line 8. Patent discloses 0.5% by weight of amphiphilic copolymer in example 42. Patent discloses in example 43 an ONV after sun milk composition, in example 45 a W/O cream, in example 46 a body wash, in example 47 a baby shampoo, in example 48 an antidandruff shampoo, and in example 50 a hair gel.

Patent discloses that the co-polymers are used in combination with anionic, nonionic, cationic, zwitterionic and amphoteric surfactants to form cosmetic compositions (see col. 6, line 8-col. 7, and line 54). Specifically, note Examples 41-51, which disclose formulation compositions that contain the water-soluble co-polymer in combination with various surfactants, water and solvents. See col.9, lines 10-14 for emulsions.

Claim Rejections - 35 USC § 103

Claims 1-10 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent 6,645,476 ('476).

If it can be argued that the claims are not anticipated, they are certainly obvious over patent '476. See the all the relevant portions outlined above.

One of ordinary skill in the art would prepare the compositions in the form of oil-in-water emulsions using the amphiphilic polymer and one lipophilic emulsifier and use it for topical application taught by patent '476.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30: 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1615